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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.T., JR., a Person Coming Under the
Juvenile Court Law.

B236628
(Los Angeles County
Super. Ct. No. CK75111)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.T., SR.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

* * * * *

A.T., Sr., and A.T., Jr., are father and son in this dependency appeal. We will refer to A.T., Sr., as father and to A.T., Jr., by his initials. Father appeals from a permanent plan review hearing order and challenges the court's decision to relieve his court-appointed counsel. We hold that father has forfeited his contentions and affirm.

PROCEDURAL BACKGROUND

A.T. was born in April 1994. Records of the Los Angeles County Department of Children and Family Services (DCFS) indicate that A.T.'s family has had 19 referrals dating back to 1995. This case was commenced by a petition under subdivisions (a), (b), and (c) of Welfare and Institutions Code section 300,¹ filed on October 24, 2008. The petition alleged physical and emotional abuse of A.T. by both father and J.T., the mother.

The court detained A.T. in shelter care on October 24, 2008. In DCFS's report dated December 2, 2008, it recommended that A.T. remain in out-of-home care and that the parents receive reunification services. A.T. had been placed in a foster home.

At the adjudication hearing on April 23, 2009, the court found A.T. to be described by section 300, subdivisions (a), (b), and (c). The court ordered suitable placement for A.T. and reunification services for the family.

DCFS filed a six-month status report on October 15, 2009. Father had been incarcerated, and DCFS reported that he had been released in May 2009. Father was refusing to participate in the case plan and did not feel that he had done anything wrong. He felt that DCFS and the criminal justice system were wrongly accusing him of things he had not done. He wanted to see A.T., but A.T. was refusing to see or speak to father. At the six-month review hearing on October 15, 2009, the court ordered continued reunification services for mother and father.

Father filed a petition under section 388 on February 18, 2010. He requested that the court's orders regarding visitation be enforced and that the court order conjoint counseling for father and A.T. A.T.'s counsel filed an opposition to the section 388

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

petition. A.T.'s therapist stated that A.T. had consistently expressed a strong aversion to being reunified with either of his parents. A.T. felt that he currently had the opportunity to do well in school and enjoy a stable home environment, which he did not feel was available to him under his parents' care. A.T. believed he would regress if reunified with either parent, and his therapist felt there was good reason to believe this would be the case. DCFS also opposed the section 388 petition.

On March 24, 2010, the court denied the section 388 petition and ordered no visitation for father. Father filed an appeal challenging the court's denial order. We filed an unpublished opinion affirming that order in November 2010. (*In re Anthony T.* (Nov. 19, 2010, B223327).)

The court held a permanency hearing on May 10, 2010. It found that A.T. was not adoptable and his foster care arrangement with a goal of emancipation was an appropriate permanent plan. The court terminated reunification services for mother and father.

A permanent plan review hearing was held on October 4, 2010. Father's counsel was present, but father was not. The court could not confirm that proper notice had been given to father and mother, and father's counsel did not waive the defect in service. The court set an order to show cause regarding DCFS's failure to properly notice mother and father for November 5, 2010. The court stated that counsel for mother and father should notice their clients that the court was going to contemplate also relieving their counsel at the next hearing.

On October 19, 2010, father's counsel filed a walk-on request informing the court that father wanted a *Marsden*² hearing on November 5. At the November 5 hearing, father's counsel stated she had no objection to being relieved, but father wanted a new attorney. The court responded as follows: "Okay. Well, I'm not inclined to appoint counsel for you, Mr. [T.] The reasons are that [A.T.] is 16. He's in a permanent plan. The focus is on his permanency and stability, not reunification with you. Clearly, you

² *People v. Marsden* (1970) 2 Cal.3d 118.

can hire private counsel if you want. And short of that, I will hear from you now why you think that I should relieve Ms. Berger and appoint somebody else to represent you.” Father explained his reasons for wanting new counsel. The court listened to his statement and then began responding, but father was trying to talk over the court and was interrupting the court. The court asked father to step out. It then relieved counsel for both parents.

The court held further review hearings on March 23, 2011, and September 29, 2011. Father appeared at the September 29 review hearing. A.T. was present in a waiting area at the court, but when he heard father was present, he advised his counsel that he did not want to see father, and the court excused A.T.’s presence in court. Father expressed distress to the court over the fact that he was not allowed to visit A.T. He told the court he wanted to move the case to another court and complained, “I don’t even have a lawyer.” The court responded that father could “certainly bring an attorney to represent” him. After hearing from all parties, including father, the court ordered that the permanent plan for long-term foster care remain unchanged.

Father filed a notice of appeal on September 29, 2011.

CONTENTIONS

Father’s opening brief contends that “[t]he juvenile court’s unnoticed decision to relieve counsel for [father] was wrongful in light of the fact that [father] was at all times an active participant in the proceedings who desired counsel. . . . The wrongful conduct by the juvenile court infected the subsequent proceedings including the review hearing of September 29, 2011.”

DCFS has not filed a brief. Instead, it filed a letter stating that, because it did not take a position in the juvenile court on whether the court should relieve father’s counsel, it was taking no position on the issue in this appeal.

Pursuant to Government Code section 68081, we advised father that we were considering whether to dismiss his appeal for lack of jurisdiction because he did not file a notice of appeal from the November 5, 2010 order relieving him of counsel. We invited him to state his views on the matter. In his supplemental letter brief, father contends that

he is challenging the orders and judgment of the September 29, 2011 permanent plan review hearing because he complained at the hearing that he did not have an attorney to represent him, and as a result of his lack of representation, he was not able to effectively articulate his complaints to the court. He asserts that he timely filed a notice of appeal from the September 2011 hearing. He further asserts that the court's relief of counsel at the November 2010 hearing was an error of a continuing nature that negatively impacted every hearing thereafter.

DISCUSSION

Section 395 provides that the judgment in a dependency proceeding is the dispositional order, and any subsequent order, with some limited exceptions that do not apply here, may be appealed as an order after judgment. (§ 395, subd. (a)(1).) “A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.) “‘Permitting a parent to raise issues going to the validity of a final earlier appealable order would directly undermine dominant concerns of finality and reasonable expedition,’ including ‘the predominant interest of the child and state’” (*Ibid.*) Thus, this forfeiture rule “serves vital policy considerations . . . and prevent[s] late-stage ‘sabotage of the process’ through a parent’s attacks on earlier orders.” (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.)

Here, while father urges that he is challenging the court's orders at the September 29, 2011 hearing, he asserts they were in error only because of his lack of representation. The court ordered father's counsel relieved on November 5, 2010. Father never appealed that order, even though it was an appealable postjudgment order. Nearly a year after the order, he attempted to challenge it by filing a notice of appeal purportedly from the September 2011 orders. Father has forfeited any challenge to the November 2010 decision to relieve him of counsel. (*Sara M. v. Superior Court, supra*, 36 Cal.4th at p. 1018.)

The notion that the court's order relieving him of counsel may be appealed at any time because it was a continuing wrong that infected all further hearings and orders is

unpersuasive. Father cites a single case for this continuing wrong theory, *In re Kristin W.* (1990) 222 Cal.App.3d 234, 248, fn. 5 (*Kristin W.*). In *Kristin W.*, the father challenged the sufficiency of the reunification services provided to him, among other things. (*Id.* at p. 248.) He had been receiving reunification services for approximately one year, and at the 12-month review hearing, the court impliedly terminated reunification services and ordered the government agency to provide permanency planning services with the goal of adoption. (*Id.* at p. 244.) It was from this 12-month review hearing that the father appealed. In a footnote, the court stated: “The trial court’s alleged errors [regarding the insufficiency of the reunification plan] are of a continuing nature to the date of the permanency planning hearing. By analogy to the limitations period for continuing wrongs such as trespass or nuisance [citation], the time for filing an appeal from such a continuing error would commence upon the entry of the permanency planning order.” (*Id.* at p. 248, fn. 5.)

The analogy to the tort doctrine of continuing wrongs is not apt in this case. In tort law, the accrual of a cause of action may be delayed when the action is “based on [a] progressively developing or continuing wrong” and the “nature, extent, or permanence of the harm is difficult to discover.” (3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 497, pp. 635-636.) The court’s initial order for reunification services in *Kristin W.* was nonspecific and merely directed the appropriate government agency to provide the services without elaboration. (*Kristin W.*, *supra*, 222 Cal.App.3d at p. 241.) The agency worked out a plan for services several months after the court’s order, and the plan was modified seven months or so after that. (*Id.* at pp. 241-242.) It may have been “difficult to discover” the harm from the alleged insufficient reunification services at the time of the court’s initial order in *Kristin W.*, but that is not the case here. Father’s lack of counsel was not a continually evolving situation. It was apparent on November 5, 2010, that the court relieved father’s counsel, and that lack of representation is the exact harm he belatedly chose to challenge. Moreover, *Kristin W.* did not address the vital policy considerations in dependency cases, including promoting the interest of the child with finality and reasonable expedition. To import the continuing wrong theory from tort to

dependency cases would run counter to those considerations, and we decline to do so in this case.

DISPOSITION

The order is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.